IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

First Appeal St. No. 2294/2007

Vidarbha Irrigation Development Corporation,
Through Executive Engineer,
Lower Wardha Canal Division,
Wardha
Tah. & Dist. Wardha .. **Appellant**

Versus

1. Shankar @ Shrawan S/o Kisan Mahakulkar,
Aged about 66 years, Occ. Agriculturist,
R/o Ridhora, Tah. & Dist. Nagpur.

2. State of Maharashtra,
through Collector,
Nagpur.

3. The Special Land Acquisition Officer,
Kanholi Nallah Project, Nagpur. **Respondents**

Mr. V.G. Palshikar, Advocate for the appellant.
Mr. S.P. Kshirsagar, Advocate for respondent no.1.
Mrs. K.S. Joshi, A.G.P. for respondent nos. 2 and 3.

CORAM :**A.P. Lavande & R.V.More, JJ**
DATE : 24/10/2007

Judgment (Per A.P.Lavande, J)

1. Heard Mr. V.G. Palshikar, learned counsel for the appellant, Mr. S.P. Kshirsagar, learned counsel for respondent

no.1 and Mrs. K.S. Joshi, learned A.G.P. for respondent nos. 2 and 3.

2. By this appeal, the appellant takes exception to the judgment and award dated 20.2.2006 passed by Civil Judge , Senior Division, Nagpur in Land Acquisition Case No.107/1999 by which compensation has been enhanced in favour of respondent no.1. The State of Maharashtra by notification dated 6.6.1995 issued under Section 4 of the Land Acquisition Act (hereinafter referred to as 'The Act') acquired lands for public purpose. The land of the respondent no.1 was also acquired in terms of the said notification. The Land Acquisition Officer declared the award on 19.4.1997. Dis-satisfied with the award, respondent no.1 sought reference under section 18 of the Act claiming higher compensation. The Reference Court has enhanced compensation in favour of respondent no. 1.

3. On 12.3.1995 the appellant-Corporation was constituted by the State of Maharashtra and the project for which the land was acquired was handed over to the appellant. Admittedly, before the Reference Court, the appellant was not made party.

4. By separate order passed today, we have granted leave to the appellant to file appeal against impugned judgment and award.

5. Mr. Palshikar, learned counsel for the appellant submitted that the appellant was proper party before the Reference Court and since the appellant was not given notice of the claim for higher compensation made by respondent no.1, the impugned judgment and award is liable to be set aside and the matter remitted back to the Reference Court in order to give opportunity to the appellant to lead evidence in the matter. In support of his submission, Mr. Palshikar relied upon the following judgments:-

i) U.P.Awas Evam Vikas Parishad v. Gyan Devi;
(AIR 1995 S.C. 724); and

ii) Abdul Rasak and others vs. Kerala Water Authority and others) ;
(AIR 2002 Supreme Court, 817);

6. Mr.Kshirsagar, learned counsel for respondent no.1 submitted that no case has been made out for setting aside the impugned judgment and award and remitting the matter back to the Reference Court. Mrs. Joshi supported the submissions made by Mr. Palshikar.

7. We have considered the submissions made by the learned counsel for the parties.

8. The Apex Court in U.P. Awas Evam Vikas Parishad (supra) has inter alia, held that the local authority or acquiring body for whom land is

being acquired has a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation. The Apex court has further held that local authority is a proper party in the proceedings before the Reference Court and is entitled to be impleaded as party in those proceedings in order to defend the determination of the amount of compensation by the Collector.

9. In Abdul Rasak's case (supra), the Apex Court upheld the order of remand passed by the High Court and further gave certain directions.

10. In our opinion, ratio laid down by the Apex Court in Abdul Rasak's case (supra) is squarely applicable in the present case. Following ratio laid down by the Apex Court in Abdul Rasak's case (supra) we set aside the impugned award and remand the matter back to the reference court with the following directions.

i) The Corporation shall be deemed to have been brought on record in the reference case as defendant no.3. The cause title of the reference shall be amended accordingly. The authority may file its written statement to the claim petition filed by the claimant ;

ii) The statement of the witnesses already recorded on behalf of the claimants need not be recorded afresh:

iii) The Corporation shall be allowed an opportunity of cross-examining the witnesses which have already been

examined.

iv) The claimant may adduce such other evidence as he may propose to do and both the State of Maharashtra and the Corporation shall have the liberty of cross-examining such witnesses who are now examined by the claimant;

v) The Corporation shall have the liberty of adducing such evidence as it may propose to do.

vi) The Corporation shall not be entitled to a separate notice of the proceedings. All the parties present, in this Court are directed through their respective counsel to appear before the reference court on 5.12.2007 at 11.00 a.m..

vii) The reference Court shall expeditiously proceed to try the reference case and in any case pass award on or before 30th June, 2008.

11. The appeal is disposed of in the aforesaid terms with no order as to costs.

Judge **Judge**